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SOCIAL SECURITY: SELECTIVE FACE-TO-FACE INTERVIEWS WITH 1/1
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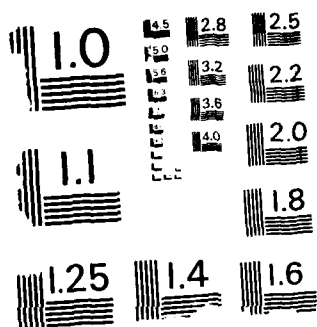
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United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on
Social Security, Committee on Ways and
Means, House of Representatives

AD-A207 465

April 1989

SOCIAL SECURITY

Selective Face-to-Face Interviews With Disability Claimants Could Reduce Appeals





United States
General Accounting Office
Washington, D.C. 20548

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Human Resources Division

B-234075

April 20, 1989

The Honorable Andy Jacobs, Jr.
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

This report presents the results of our review of the differences between the eligibility decisions made by state Disability Determination Services personnel and those of administrative law judges under Social Security disability programs. Our review was done between February 1987 and June 1988 and covered the Social Security Administration's Office of Hearings and Appeals and selected hearing offices and state agencies.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date of publication. At that time, we will send copies of the report to interested congressional committees, the Secretary of Health and Human Services, the Office of Management and Budget, the Commissioner of Social Security, and other interested parties, and will make copies available to others on request.

This work was carried out under the direction of Franklin Frazier, Director of Income Security Issues (Disability and Welfare). Other major contributors are listed in appendix IV.

Sincerely yours,

Lawrence H. Thompson

Lawrence H. Thompson
Assistant Comptroller General



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Executive Summary

Purpose

Nearly two-thirds of the people who apply to the Social Security Administration (SSA) for disability benefits are initially denied them. Many appeal this decision, asking for reconsideration. Some go on appealing to an administrative law judge (ALJ). The appeals process can be a lengthy one: decisions from ALJs have come an average of 14 months after the original disability applications were filed. The process can also be costly because claimants often hire attorneys.

The Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, asked GAO to provide (1) information on several aspects of the appeals process, including reasons for the high rate of decision reversals at the ALJ level, and (2) suggestions for making the process less burdensome.

This report discusses the reasons for the differences between ALJ decisions and the initial ones. It also discusses whether changes at the reconsideration stage could reduce the need for appeals to ALJs, especially for certain categories of older workers who are frequently granted benefits by ALJs.

Background

SSA administers two disability programs under the Social Security Act: the Disability Insurance Program (under title II) and the Supplemental Security Income Program for disabled and blind people (under title XVI). For both programs, SSA relies on state Disability Determination Services (DDSS) to make initial disability determinations for claimants.

DDSS also provide disability claimants with their first level of appeal: a claimant may ask for reconsideration of a decision and may submit additional evidence. A claimant denied benefits by a DDS may appeal to an ALJ at 1 of SSA's 132 hearing offices around the country. ALJs hold hearings at which claimants (1) have their first face-to-face interview with a decision-maker and (2) are usually represented by an attorney or other representative. Subsequent appeals may be made to SSA's Appeals Council and the federal courts.

The number of appeals to ALJs rose fivefold from 1973 to 1983, as benefit denials at the state agencies increased and numerous benefit terminations were processed. ALJs still had heavy pending caseloads in 1987. DDSS resolve about 88 percent of disability claims in 3 to 6 months, but claimants who appeal further may wait 1 to 4 years for a final decision, depending on the successive actions that may occur.

Results in Brief

ALJs reverse DDS decisions in over 60 percent of the cases they decide, often disagreeing with DDS determinations about claimants' remaining ability to work (residual functional capacity). ALJs question claimants extensively at hearings and often conclude that claimants are more limited in their activities than DDSS have determined.

Most claimants who appeal are represented by attorneys or other representatives, who generally accept cases on a contingency fee basis. ALJs often use independent medical advisers and vocational experts to assist at hearings, and may send claimants to independent physicians for examination.

Some ALJs believe DDSS could approve more cases and reduce the need for appeals if DDSS made more realistic determinations about the ability of older claimants to continue working. GAO's analysis of 1986 disability applications indicated that several categories of older claimants are likely to be granted benefits when they appeal to ALJs. Some of these appeals might be avoided if DDSS interviewed selected claimants at the reconsideration stage. (A) X

GAO's Analysis

GAO used computer-matching techniques to study 1986 DDS decisions and subsequent appeals. GAO found that ALJs were reversing 70 to 100 percent of DDS decisions for several categories of claimants, including those aged 55 to 59 who suffered from back disorders, heart conditions, lung disease, diabetes, or anxiety.

GAO reviewed three samples of case files to determine the reasons for ALJ reversals of DDS denials. The overwhelming area of disagreement was the residual functional capacity of claimants. DDSS nearly always determined that claimants were capable of more vigorous work activity than ALJs did. For these categories of older claimants, information elicited at the hearings appears to have been the principal difference between the evidence used by ALJs and that used by DDSS.

Recommendations

GAO recommends that the Health and Human Services (HHS) Secretary direct the SSA Commissioner to initiate a demonstration project that would include face-to-face interviews for selected claimants at the reconsideration stage. A claimant should be interviewed if he or she is in the categories likely to be granted benefits by ALJs. An interviewer's observations about a claimant's impairment and conclusions about his or her credibility should become part of the case record. GAO believes this

would allow DDSS to (1) approve some claims that would otherwise be approved by ALJs and (2) better document DDS decisions that are reviewed by SSA or ALJs.

Agency Comments

HHS agreed that GAO had identified an area in the appeals process that either warranted further study or should be considered for revision. Rather than begin a new demonstration project with face-to-face interviews at this time, however, HHS said it prefers to wait until it completes an evaluation of its Personal Appearance Demonstration (PAD) projects (see p. 21).

HHS suggested that in evaluating PAD projects, it would include consideration of the types of cases GAO believes might benefit from earlier face-to-face interviews. The HHS comments imply that if the PAD results support GAO's conclusions, then further testing or demonstration may be unnecessary; presumably, HHS would modify the initial or reconsideration stage of the adjudication process accordingly. If the PAD data are insufficient to address GAO's proposal, HHS said it will then reconsider GAO's recommendation for a demonstration. HHS said it expects to report the PAD results by February 1990; consequently, it is deferring more definitive actions until that time.

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Abbreviations

ALJ	administrative law judge
DDS	Disability Determination Service
GAO	General Accounting Office
HHS	Health and Human Services
OHA	Office of Hearings and Appeals
PAD	Personal Appearance Demonstration
RFC	residual functional capacity
SSA	Social Security Administration
SSI	Supplemental Security Income

Introduction

The Social Security Administration (SSA) administers two disability programs under the Social Security Act: the Disability Insurance Program (under title II) and Supplemental Security Income (SSI) Program for disabled and blind people (under title XVI). For both programs, SSA relies on state Disability Determination Services (DDSS) to make the initial disability determinations for a claimant. SSA funds DDSS, gives them guidance, and monitors them through quality assurance reviews.

At a DDS, a claims examiner prepares a claimant's case for a determination. The examiner reviews a claimant's application and assembles available medical evidence. If needed, the examiner arranges for a claimant to be seen by independent physicians. The DDS examiner and a DDS staff physician evaluate every case to determine whether the claimant's impairment or impairments meet the disability criteria required by law. Claimants who are dissatisfied with the initial DDS determination have several opportunities for appeal.

Criteria for Disability Decisions

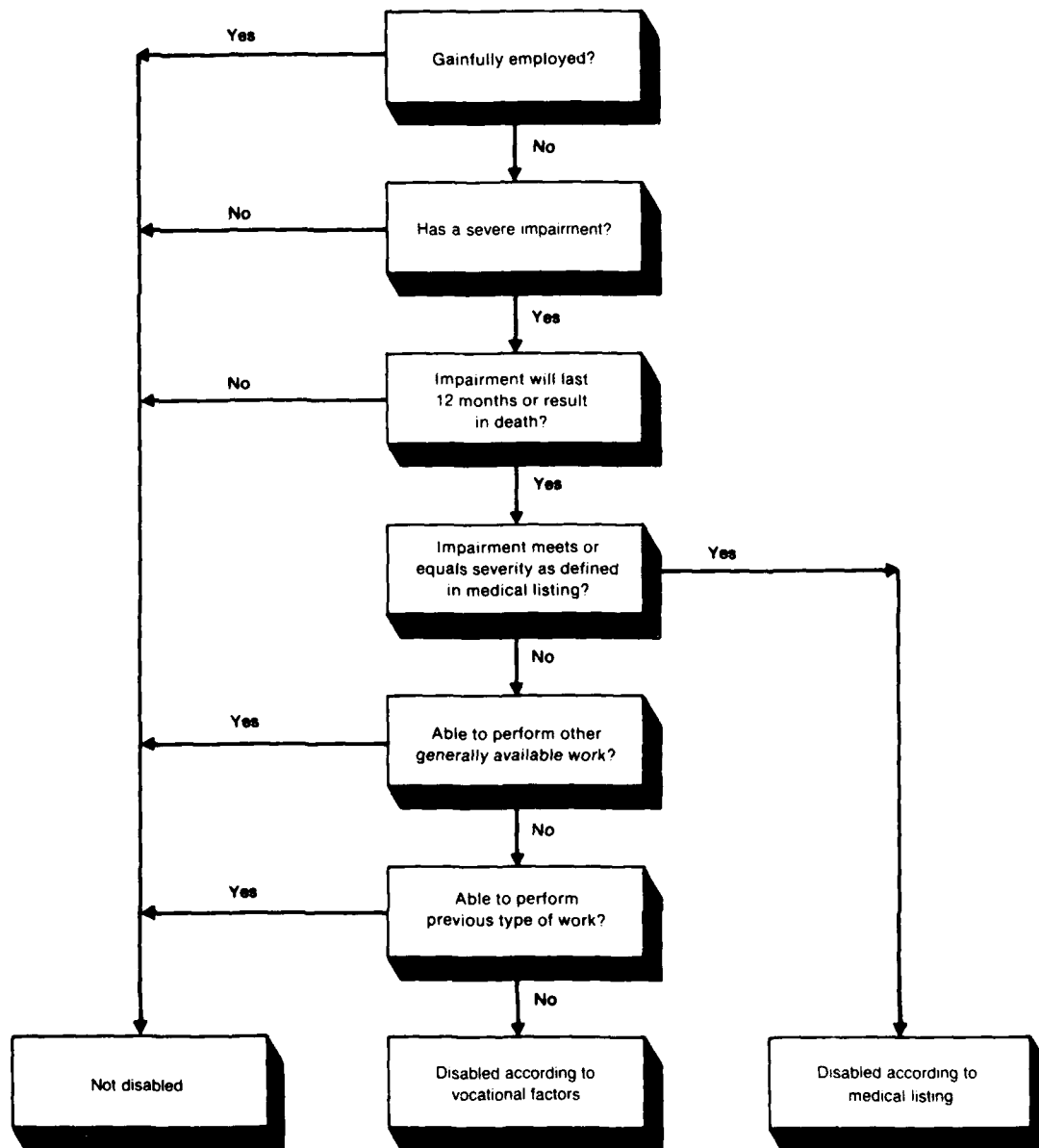
The Social Security Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or . . . last for a continuous period of not less than 12 months."¹ The act further specifies that a covered worker may be determined disabled

"only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists . . . in significant numbers either in the region where such individual lives or in several regions of the country."

Through regulations, SSA has incorporated these medical and vocational criteria into a "sequential evaluation" to be used in making disability decisions, as shown in figure 1.1. If a claimant is not working at substantial gainful activity, a DDS must determine whether he or she has a "severe impairment" that will last at least 12 months. If so, the next step is to determine whether the claimant's impairment meets or equals SSA's medical listings. SSA has listed a large number of medical impairments with degrees of severity that would qualify a claimant for benefits.

¹The act includes a separate provision applicable to blindness.

Figure 1.1: Disability Decision and Sequential Evaluation Process



If a claimant's impairment corresponds to an impairment in the listings or is similar enough to be judged "equivalent," benefits are granted without further evaluation.

If a claimant's impairment is not as severe as an SSA-listed impairment, medical (physical or psychological) limitations combined with vocational limitations might still prevent the claimant from working. A decision-maker first decides what residual functional capacity (RFC) for work the claimant has. This is generally expressed in levels of exertion (for example, medium work, light work) or psychological terms (for example, ability to follow instructions or handle stress). RFC is compared with the claimant's former type of work to determine whether return to that type of work is feasible. If not, the claimant's age, education, and vocational skills are considered to determine if other job opportunities are possible. A claimant will be awarded benefits if the combined medical and vocational limitations effectively rule out any other work that is reasonably available.

SSA has constructed grids to assist decision-makers in deciding whether a claimant can adapt to other work. The grids specify the effect of age, education, and skills for RFC levels of medium, light, and sedentary work. Sometimes a claimant may not fit neatly on a grid, and the decision-maker must try to adapt the logic of the rules to the claimant's situation. For example, a claimant with seizure disorders may be physically capable of medium-exertion work, but many work situations (for example, those with heights, machinery, and driving) would be dangerous for him or her. If the claimant does not have skills to adapt to light or sedentary work, benefits would be awarded.

Appeals Process

DDS provide disability claimants with their first level of appeal. A claimant may ask a DDS to reconsider its initial decision and may submit additional evidence. The case will be given to a different claims examiner and staff physician to review.

After reconsideration, a claimant may appeal to an administrative law judge (ALJ) at 1 of 132 hearing offices around the country. ALJs, employed by SSA's Office of Hearings and Appeals (OHA), hold hearings at which a claimant (1) has the first face-to-face interview with a decision-maker and (2) is usually represented by an attorney or other representative. ALJs may assemble additional medical evidence as well as use expert medical and vocational witnesses at a hearing. ALJs issue written decisions summarizing all the evidence and giving their reasons for

either granting benefits (reversing a DDS) or denying benefits (affirming a DDS).²

A claimant who is denied benefits by an ALJ may appeal his or her case to SSA's Appeals Council. Each case is assigned to one of the council's 20 members, who may affirm an ALJ's decision without consulting another member. To object to an ALJ's decision, however, a second member must review the case and agree. Council members, assisted by a large staff of analysts, decide whether an ALJ properly applied the law and regulations, including whether his or her decision was supported by "substantial evidence." The Appeals Council, acting on behalf of the Secretary of Health and Human Services (HHS), is the final level of administrative appeal in disability cases. The council may affirm an ALJ's decision, reverse it, or remand it for further consideration. Remanding the decision may require an ALJ to collect more evidence or better document the reasons for a decision.

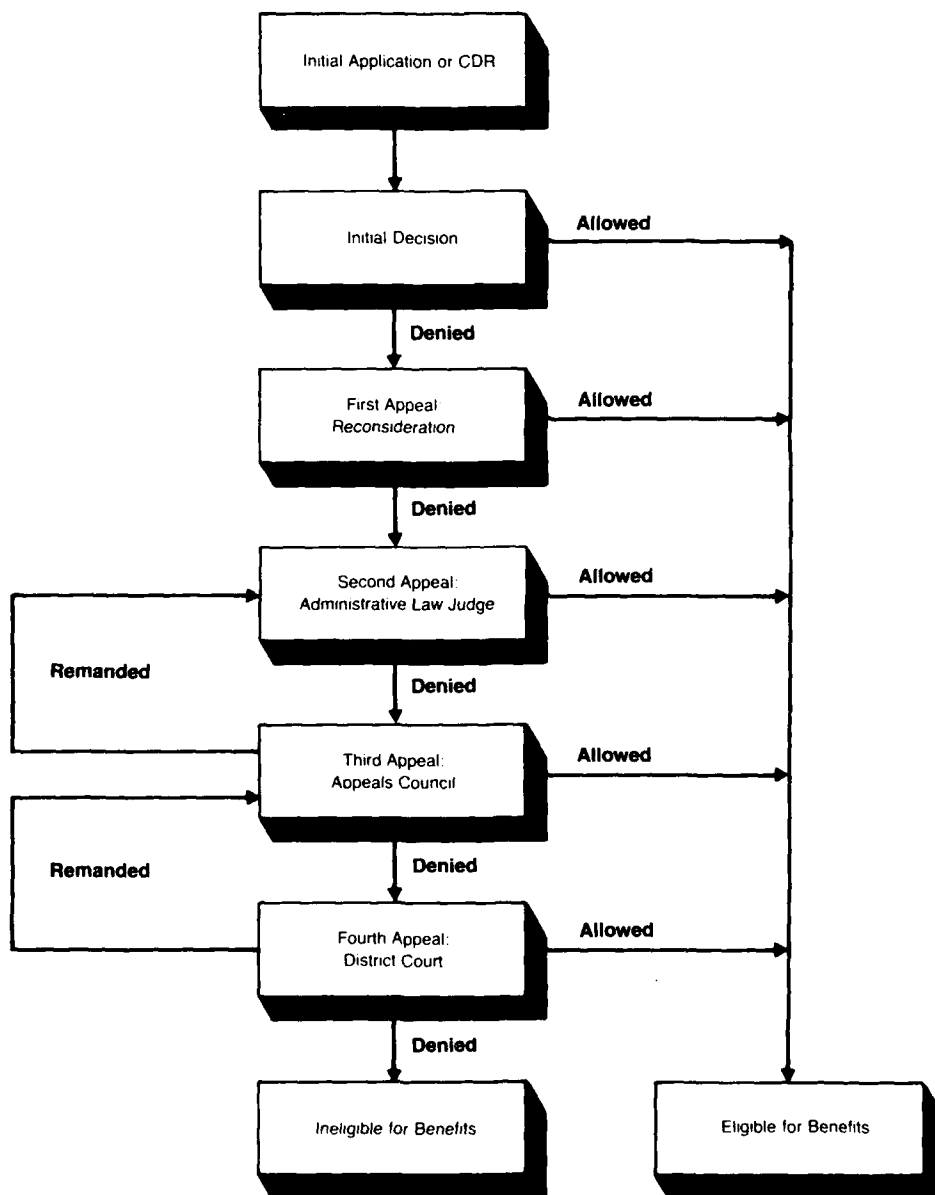
A claimant who has exhausted administrative remedies may file a complaint in a federal district court.³ For use by the claimant and other parties in court, OHA prepares transcripts of the ALJ hearing and copies of all documents in the case file. Courts may reverse or affirm SSA's decision, or they may remand a case for further consideration. When a court remands a case, the Appeals Council occasionally takes action on it directly, but usually the case is remanded to a hearing office and assigned to the original ALJ, if possible. The ALJ may supplement the evidence, often by holding a new hearing, and write a recommended decision to the Appeals Council; it then issues a final decision. The disability appeals process is shown in figure 1.2.

The disability decisions made during the appeals process in fiscal year 1987 are shown in table 1.1. Although this table may be viewed as a rough approximation of the progressive disposition of 1987 cases through the appeals process, the reader should recognize that those cases decided by ALJs, the Appeals Council, and the courts may have originated in an earlier year.

²Although ALJ decisions are technically either reversals or affirmations, it is perhaps more meaningful to call them allowances and denials. As explained later in this report (p. 16), ALJs often bring more information to bear on cases, including face-to-face interviews, than DDSs have used. This additional information accounts for some ALJ reversals of DDS decisions.

³Resort to a federal district court is also available prior to exhaustion of administrative remedies if both SSA and the claimant agree that a constitutional question is involved.

Figure 1.2: Disability Decision and Appeals Process



Chapter 1
Introduction

Table 1.1: Disability Decisions
(Fiscal Year 1987)

Decision-maker	Decisions ^a	Benefits granted	Percent
DDSs:			
Initial determinations	1,570,022	570,922	36.4
Reconsideration	450,019	65,883	14.6
ALJ initial hearings	195,795	118,273	60.4
Appeals Council	50,802	2,500	4.9
Courts	6,581	2,148	32.6
ALJ decisions on Appeals Council remands	5,682	3,809	67.0
ALJ decisions on court remands	9,560	6,526	68.3

^aThis table does not include continuing disability reviews, which are reviews to determine whether beneficiaries have recovered sufficiently from their disabilities to be taken off the benefit rolls.

Source: SSA and OHA statistics

Time Frames for Issuing Decisions

In fiscal year 1987, ALJs issued about 196,000 decisions, which represent about 12 percent of the claimants who filed initial applications for disability (see table 1.1). Thus, DDSs resolved about 88 percent of the cases, either granting or denying benefits. DDSs did this in a relatively short time: an average of less than 3 months for cases at initial determinations and just over 3 months at the reconsideration stage. Claimants who appeal their cases further, however, experience a much longer process. ALJ decisions are issued, on the average, 8.4 months after reconsideration decisions. The number of months that pass, on the average, between different decision points are shown in table 1.2.

Table 1.2: Average Time Intervals in the Disability Appeals Process

In months		
Decision point	Average time from previous point	Cumulative time
Application	0.0	0.0
Initial DDS decision	2.7	2.7
DDS reconsideration	3.1	5.8
ALJ decision	8.4	14.2
Appeals Council decision	5.1	19.3
Court order (reversal or remand)	14.5	33.8
ALJ decision after remand	10.0	43.8
Second Appeals Council decision	3.8	47.6
Court order after remand	8.2	55.8

Source: These are composite averages based on three studies: two by GAO and one by OHA

Growth of the Appeals Workload

In fiscal year 1973, OHA hearing offices received 72,202 appeals; in fiscal year 1983, the offices received 363,533.¹ OHA's growth during this period, reflecting its efforts to cope with the extraordinary growth of its workload, is shown in table 1.3.

Table 1.3: Growth of OHA and Its Workload

Fiscal year	Requests for hearings	ALJs on duty (average)	Support staff (average)	Per ALJ	
				Case dispositions per month (average)	Case pending (average)
1973	72,202	420	2.2	14	117
1983	363,533	797	4.6	37	228
1988	289,421	682	4.9	37	230

Source: OHA Key Workload Indicators, fiscal year 1988

Several developments accounted for this growth. SSA began processing applications under the SSI program (see p. 8) in 1974, increasing the number of disability claimants. In the late 1970's, a rising DDS denial rate led to greater numbers of appeals to ALJs. According to one SSA study,² the increase in DDS denials reflected SSA's efforts to tighten program administration and reduce DDS subjectivity. Finally, in the early 1980's, SSA's implementation of continuing disability reviews resulted in large numbers of benefit terminations and nearly overwhelmed hearing offices with appeals. The workload pressure was relieved somewhat when the HHS Secretary, reacting to public and congressional pressure, declared (in early 1984) a moratorium on continuing disability reviews. The pending workload for ALJs in fiscal year 1987, however, returned to that of fiscal year 1983 and remained high in fiscal year 1988.

Objectives, Scope, and Methodology

In an October 13, 1987, letter, the Chairman of the Subcommittee on Social Security, House Committee on Ways and Means, asked us to provide information on several aspects of the SSA appeals process, including reasons for the high rate of ALJ reversals of DDS decisions and suggestions for making the process less burdensome.

¹ALJs hear appeals concerning retirement and survivors benefits, health insurance (Medicare) benefits, and black lung benefits, as well as disability claims. But the disability claims account for about 95 percent of the appeals workload, according to fiscal year 1987 data.

²Report by the Secretary of Health and Human Services on Implementation of the Bellmon Amendment (Jan. 1982), p. 24.

Chapter 1
Introduction

In this report, we discuss differences between DDS decisions and ALJ decisions. We rely partly on OHA statistics, using the latest available at the time of our review. We also cite the results of a 1981 study by SSA of the reasons for the differences between ALJ and DDS decisions.⁶ To study 1986 disability applicants, we supplemented the statistics and study results by using computer matching between different SSA data files. We identified categories of claimants, according to age and type of disability, whose appeals were approved by ALJs more than 70 percent of the time. We further studied a sample of these cases by reviewing case files. This enabled us to focus on the areas of disagreement between ALJs and DDS.

During our review, we interviewed the current and former SSA associate commissioners for hearings and appeals; the chief ALJ and former deputy chief ALJ; officials of OHA's Office of Appeals Operations, Office of Appraisal, and Division of Civil Actions; the deputy chairman and a member of the Appeals Council; and ALJs at hearing offices in Ohio (Cincinnati and Columbus) and Indiana (Indianapolis). We also met with officials and claims examiners at the Ohio and Indiana DDS.

Our review began in February 1987 and concluded in June 1988. We carried out this review in accordance with generally accepted government auditing standards. In addition, we did extensive testing and editing to assure the reliability of the computerized data files acquired from SSA. Further details on the methodology used in our study are given in appendix I.

⁶The Bellmon Report, submitted to the Congress by SSA.

Appeals to ALJs Could Be Reduced If DDSs Selectively Interviewed Claimants at the Reconsideration Stage

In fiscal year 1987, ALJs reversed DDS denials of disability benefits in more than 60 percent of the 196,000 cases they decided. In general, ALJs bring more information to bear on cases than DDSs do. ALJs, therefore, disagree frequently with DDSs over the extent of a claimant's RFC. The high ALJ reversal rate of DDS decisions is noteworthy, but the reader should keep in mind that the vast majority of disability cases were resolved by DDSs: about 88 percent of fiscal year 1987 disability claimants were either granted benefits by a DDS or accepted DDS denials; for an additional 5 percent, ALJs affirmed DDS decisions.

The high reversal rate raises the question, however, of whether more of the cases could be approved by DDSs, saving SSA the additional administrative costs of appeals and claimants the delays and expenses. Using computer-matching techniques, we found that the ALJ reversal rate was higher for certain categories of claimants—specifically, claimants over the age of 55 with back disorders, heart conditions, lung disease, diabetes, or anxiety. Our review of a sample of case files indicated that in deciding these cases of older claimants, ALJs relied primarily on face-to-face interviews. DDSs have had some limited experience with face-to-face interviews; the general result has been a small increase in favorable decisions. If DDSs interviewed selected categories of claimants at the reconsideration stage, DDSs might approve more of the claims that are currently being approved by ALJs.

Differences Between DDS and ALJ Decisions

Although the criteria for determining disability remain the same, ALJs provide claimants a somewhat different evaluation process than DDSs do. With few exceptions, an ALJ conducts the first face-to-face interview with a claimant, which can be an important factor in assessing a claimant's limitations and RFC. ALJs sometimes use expert witnesses at hearings; ALJs may also get additional medical examinations of claimants. A large majority of claimants are assisted by attorneys or other representatives, who may contribute to case presentation and development. All of these factors affect the decisions of ALJs to reverse DDS decisions.

ALJs Often Disagree With RFC Assessments Done by DDSs

ALJs often approve benefits using vocational factors in their decisions. According to a study by OHA, ALJs arrived at 78 percent of their 1985 allowances on the basis of vocational factors. We reviewed 105 ALJ decisions (both allowances and denials) at two hearing offices and found that compared with DDS decisions, ALJs nearly always decided that claimants were more restricted in their activities. We asked several ALJs about this; they said they often considered DDS assessments of RFC to be

Chapter 2
Appeals to ALJs Could Be Reduced If DDSs
Selectively Interviewed Claimants at the
Reconsideration Stage

unrealistic, especially in cases of workers over the age of 55. These ALJs said they generally disregard the RFC assessments done by DDS physicians because these assessments are based on a claimant's case file only, not on physical examination of a claimant.

DDS officials and claims examiners we interviewed said it is difficult for them to support RFC assessments, such as those made by ALJs. They said SSA quality assurance reviewers will often challenge such assessments and require more documentation. This may explain why DDSs do not approve many claims on vocational grounds. Our analysis of 1986 DDS decisions showed that 77 percent of their allowances were based on the medical listings, with 23 percent based on vocational factors.

ALJs Use Hearings and
Expert Assistance to
Obtain Additional
Evidence in Cases

ALJs use the medical evidence assembled by DDSs, but ALJs often add to it in various ways. They held hearings in about 94 percent of the cases they decided in fiscal year 1987. (The others were decided on the basis of evidence in the file, usually in favor of claimants.)

At a hearing, an ALJ will ask a claimant questions about such areas as work history, current activities, and perceptions of his or her impairment; thus, an ALJ can form an opinion as to a claimant's credibility. An ALJ may also have a physician present as medical adviser, who will review the file, listen to the claimant's testimony, and render an opinion on the severity of the claimant's impairment and its impact on the claimant's capacity for work-related activities. Similarly, an ALJ may use a vocational expert to answer questions about the claimant's past work experience and its relevance to jobs the claimant might be physically able to perform with his or her impairment.

According to OHA statistics for fiscal year 1986, ALJs used medical advisers in over 32,000 cases, that is, 22 percent of the decisions issued. ALJs used vocational experts in over 52,000 cases, that is, 36 percent of the decisions issued. ALJs sometimes send claimants to be examined by independent physicians, referred to as consulting examiners. OHA does not track the use of consulting examiners by ALJs, but data from DDSs (which arrange the examinations for the ALJs) suggest examiners are used about as often as are medical advisers (22 percent of decisions).

Although ALJs use the same consulting examiners as DDSs, ALJs attempt to get more evidence than do the state agencies. SSA wants the consulting examiners' reports to DDSs to include only objective medical findings. An

ALJ often sends a form that asks for an examiner's opinions of a claimant's capabilities for physical exertion. The ALJ then uses this assessment to help him or her arrive at an RFC determination for the claimant. Several ALJs told us that when they decide on RFCs, they usually agree with the consulting examiners' assessments; the ALJs might, however, rely on other evidence to reach a different conclusion.

Attorneys Also Present Additional Evidence at ALJ Hearings

Although few claimants hire attorneys or other representatives for the reconsideration stage, claimants do hire them for a large majority of ALJ hearings. OHA statistics for fiscal year 1986 showed attorneys were present at 65 percent of ALJ hearings and other representatives at another 18 percent.

Attorneys generally take disability cases on a contingency basis, with claimants agreeing that 25 percent of retroactive benefits paid will go to the attorney. SSA withholds up to 25 percent of retroactive benefits;¹ it will pay the attorney directly on receipt of a fee petition approved by OHA.

Attorneys often add to the evidence in a case by submitting reports of physicians or other experts. In general, claimants with representation are a little more successful in obtaining favorable determinations in ALJ hearings than those without. This observation should be interpreted with caution, however. As OHA's chief ALJ noted, this may be the result, in part, of attorneys' selecting primarily cases that they feel have a good chance of succeeding. This could affect the mix of cases coming before ALJs.

The Bellmon Study Showed the Importance of Face-to- Face Interviews in ALJ Decisions

In 1981, responding to an amendment to the Social Security Act introduced by Senator Henry Bellmon, SSA undertook a study of ALJ decisions. This amendment required the Secretary of HHS to (1) implement a program for reviewing ALJ decisions and (2) report to the Congress on the progress of the program. In preparation for carrying out an ongoing review of ALJ decisions, SSA studied 3,600 cases decided by ALJs.

In studying these cases, SSA had several objectives, including analyzing the effect of face-to-face interviews of claimants at ALJ hearings. To do this, the study directors selected a representative subsample of 1,000 cases from the 3,600. For each case, they prepared a transcript of the

¹Withholding of retroactive benefits applies only to title II cases.

original ALJ hearing and then edited it to remove all evidence related to the claimant's face-to-face interview (testimony of expert witnesses was retained in the edited transcript). The edited cases were then distributed to a representative sample of 48 ALJs (selected to mirror the allowance rate patterns of ALJs who originally decided the cases) for a complete redetermination.

The original ALJs had granted benefits to 63 percent of the claimants. The sample ALJs, who reviewed each case without the evidence relating to the claimant's face-to-face interview, granted benefits to only 46 percent of the claimants. Thus, the face-to-face interviews with claimants appeared to make a difference in a significant number of ALJ decisions.

GAO Study: Some Categories of Claimants Are More Likely to Be Granted Benefits by ALJs Than DDSs

We used computer-matching techniques to study the outcome of title II disability claims determined by DDSs in 1986. We focused on types of cases in which the ALJ allowance rate for granting benefits was high (70 percent or more). We also looked at the DDS allowance rate for the same categories of claimants. For some categories, we reviewed a sample of claim files to identify the differences between the DDS and ALJ decisions.

We found both high appeal rates and high reversal rates by ALJs for claimants aged 55 to 59 with back disorders, heart conditions, lung disease, diabetes, or anxiety. Claimants aged 60 and over also had high reversal rates, but lower appeal rates. One possible reason for their lower appeal rates may be the availability of reduced retirement benefits at the age of 62. Detailed results for these categories of claimants are shown in appendix II. Together, these claimant categories accounted for 13 percent of ALJ appeals in 1986.

To better understand the differences between ALJ and DDS decisions in the above types of cases, we reviewed 242 sample cases with claimants aged 55 to 59. The claimants were chosen randomly from those with back disorders, heart conditions, and lung disease who had been awarded benefits by ALJs.

As shown in table 2.1, disagreement over RFC was the principal cause of ALJ reversals of DDS decisions.

Chapter 2
Appeals to ALJs Could Be Reduced If DDSs
Selectively Interviewed Claimants at the
Reconsideration Stage

**Table 2.1: Bases for ALJ Reversal of DDS
Decisions Denying Benefits**

In percent			
Basis for ALJ reversal	Claimants aged 55 to 59		
	Back disorders	Heart conditions	Lung disease
RFC	86	71	84
Medical listings	10	17	8
Claimant's condition had worsened	0	0	0
Additional impairment not considered by DDS	1	5	3
Other	3	4	5
Total	100	100	100

Source: GAO review of 242 sample cases (1986 claimants aged 55 to 59).

DDS assessments of applicants' RFCs were much higher than those of ALJs. In other words, DDSs found the claimants capable of more vigorous work than ALJs did (see table 2.2).

**Table 2.2: DDS and ALJ Assessments of
Residual Functional Capacity in GAO
Sample Cases**

In percent		
RFC assessment	DDSs	ALJs
Level of work claimant capable of performing:		
Heavy work	2	0
Medium work	52	^a
Light work	27	17
Sedentary work	1	41
Less than sedentary work	0	30
Psychological limitations	0	1
RFC not used in decision	18	12
Total	100^b	100^b

^aLess than 1 percent

^bTotals may not add due to rounding.

In reviewing the 242 sample cases, we found that a principal difference between ALJ and DDS decisions was the ALJs' assessments of RFC, which were most likely based, at least in part, on face-to-face interviews at the hearings. ALJs held hearings in 91 percent of the cases we reviewed. As shown in table 2.3, in these 242 cases, ALJs made less use of medical advisers and vocational experts, as well as consulting examiners, than for all 1986 cases. Some of the other factors that may influence ALJ decisions (see table 2.1) were not significant in the cases we reviewed. For example, none of the ALJ decisions were based on a worsening of the claimant's impairment after the DDS decision. Only a few ALJ decisions

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were influenced by additional impairments that had not been considered by DDSs.

Table 2.3: ALJ Use of Experts Overall and in GAO Sample Cases

In percent		
Expert	All 1986 cases	GAO sample cases
Consulting examiner	22 ^a	5
Medical adviser	22	13
Vocational expert	36	26

^aEstimated from SSA statistics for October 1986 through March 1987.

Sources: OHA Operational Report (fiscal year 1986) and GAO case file reviews.

Limited State
Experience Shows
Claimant Interviews
Increase Approval
Rates in
Reconsideration Cases

DDSs may be able to identify more of the cases that are likely to be reversed by ALJs and approve these cases at the reconsideration stage. This would relieve some of the workload pressure at the hearing offices and save claimants both the hardships of delays and the cost of attorney fees. DDSs could conduct interviews with selected categories of claimants at the reconsideration stage in order to gather evidence integral to the evaluation of the claimant's disability. Through this procedure, DDSs would be more likely to reach RFC assessments comparable with those of ALJs.

DDSs have had limited experience concerning face-to-face interviews with disability claimants. In 1983, the Congress enacted Public Law 97-455, requiring DDSs to offer a hearing to a claimant whose benefits had been terminated as a result of a continuing disability review. In 1984, however, SSA placed a moratorium on continuing disability reviews, thus limiting opportunities for DDSs to hold hearings. When the moratorium was lifted and the reviews resumed in 1987, few beneficiaries were terminated under the new medical improvement standard and hearing officers still had few hearings to hold. Therefore, DDSs have used their hearing officers in other capacities, such as helping to process the claims workload. Several DDSs have experimented with having their hearing officers interview claimants at the reconsideration stage.

In 1984, the Congress required SSA to carry out Personal Appearance Demonstration (PAD) projects in 10 states; the projects were to test the efficacy of face-to-face interviews with claimants by DDS claims examiners before they denied or terminated benefits. These projects were late getting started, and SSA expects to report on them in February 1990. Before 1984, SSA had experimented with interviews in four states. In

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these experiments, a sample of claimants was given face-to-face interviews at the reconsideration stage; another sample was given the usual paper review. The sample with interviews had higher allowance rates at reconsideration and lower ALJ allowance rates.

The Missouri and Wisconsin DDSs have experimented with face-to-face interviews at the reconsideration stage. These experiments have been especially interesting because the states developed specific criteria for use in selecting claimants for face-to-face interviews. Missouri has used interviews for claimants with these impairments: mental retardation, mental impairments, musculoskeletal disabilities, and cardiac surgery. Missouri officials estimate that face-to-face interviews with selected categories of claimants increased the reconsideration approval rate by 20 percentage points. These officials told us that from January through September 1988, they conducted about 1,900 such interviews. Wisconsin experimented with interviews at the reconsideration stage during the moratorium on continuing disability reviews, giving particular attention to psychiatric cases and those involving pain. Wisconsin's hearing officers reversed 37 percent of the cases in which they held face-to-face interviews, compared with a normal 20-percent rate. For reconsideration decisions in fiscal year 1988, both Missouri and Wisconsin had accuracy rates for quality assurance that were higher than average. Missouri's rate was 99.3 percent and Wisconsin's 97.7 percent, compared with the national rate of 93.6 percent.

As summarized in a report to the Administrative Conference of the United States,² the experiments with face-to-face interviews have pointed to two conclusions: (1) the allowance rate at reconsideration increases, and (2) the claims examiners have more confidence in the accuracy of their decisions. As several ALJs pointed out to us, however, such interviews would have little effect if the claims examiners, in justifying their decisions, were not allowed to use their personal evaluation, based on the interview of claimants' impairments and credibility. If claims examiners are given this discretion, they may be able to identify some cases that would almost certainly be approved by an ALJ and keep these cases out of the SSA hearing offices.

²Allen E. Shoenberger, State Disability Services' Procedures for Determining and Redetermining Social Security Claims for the Social Security Administration. Administrative Conference of the United States (Nov. 22, 1987), pp. 29-50.

Conclusions

Decisions about disability cases for some categories of claimants are reversed by ALJs at a higher frequency than others. If some of these cases could be approved at the reconsideration stage, (1) claimants would save time and money and (2) some of the workload at the hearing offices would be relieved, giving ALJs more time to deal with more difficult cases.

To date, the limited experience with face-to-face interviews at the reconsideration stage suggests that these interviews improve decisional quality and resolve some cases that would otherwise become appeals to ALJs. The volume of cases handled at DDSs, however, makes face-to-face interviews impractical in a large proportion of cases. But Missouri and Wisconsin have had success with interviews of selected categories of claimants at the reconsideration stage.

Our analysis of 1986 DDS decisions and subsequent appeals pointed to several categories of claimants (listed in app. II) that could be selected for face-to-face interviews if they request reconsideration. The criteria for selection could be further refined through experience.

Recommendations to the Secretary of HHS

We recommend that the Secretary of HHS direct the Commissioner of SSA to initiate a demonstration project that would include interviewing selected categories of claimants at the reconsideration stage. Such a project would differ from ongoing demonstration projects (see p. 21) by focusing on those categories of claimants most likely to be approved by ALJs. By interviewing specific categories of claimants at the reconsideration stage, the number of such interviews could be kept manageable. Through quality assurance reviews of the resulting decisions at the reconsideration stage, SSA could determine whether the interviews were resulting in unwarranted benefit awards.

Agency Comments

On March 16, 1989, HHS gave us written comments on a draft of this report. HHS agreed that we had identified an area in the appeals process that either warranted further study or should be considered for revision. Rather than begin a new demonstration project at this time, however, HHS said it prefers to wait until it completes an evaluation of its PAD projects (see p. 21) before undertaking further projects concerning face-to-face interviews.

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HHS suggested that in evaluating the PAD projects, it would include the types of cases we believe might benefit from earlier face-to-face interviews. The HHS comments imply that if the PAD results support our conclusions, then further testing or demonstration may be unnecessary; presumably, HHS would modify the initial or reconsideration adjudication process accordingly. If the PAD data are insufficient to address our proposal, HHS said it will then reconsider our recommendation for a demonstration. HHS said it expects to report the PAD results by February 1990; consequently, it is deferring more definitive actions until that time.

Methodology

Analysis of ALJ Reversal Rates

To identify categories of claimant cases often reversed by ALJs, we analyzed the cases of about 427,000 title II disability claimants decided by DDSS in calendar year 1986.

Our database for DDS decisions was SSA's 831 file, which uses input forms that record DDS decisions. According to SSA officials, not all DDS decisions get recorded in the 831 file because of random failures in the process of submitting and processing data. We eliminated some records because they were missing information on diagnosis, age, or another variable we needed in our analysis. Because we wanted to focus our analysis on disabled workers, we eliminated the cases of disabled widows and children. To check the representativeness of our remaining database, we compared (1) the DDS allowance rate in our database with that reported by DDSS and (2) the ALJ allowance rate with that reported by OHA:

- DDS allowance rate fiscal year 1986 (state agency operations reports), 38 percent;
- DDS allowance rate calendar year 1986 (GAO database), 38 percent;
- ALJ allowance rate fiscal year 1987 (OHA data), 62 percent; and
- ALJ allowance rate (GAO database), 63 percent.

Our basic approach to this analysis was to determine the outcome of cases appealed to the ALJ level; to do this, we matched records of DDS initial denials to the OHA case control system. Because SSA does not have a continuous database for case histories, we could not determine the number of cases approved by DDSS at the reconsideration stage.

We identified those disability codes that accounted for significant numbers of denials at DDSS; then we looked at ALJ decisions for these denials. Controlling for age groups and level of education, we were able to focus on specific categories of claimants (see app. II) whose appeals were frequently approved by ALJs.

We then reviewed sample cases for these claimant groups. From SSA, we requested files on 375 claimants aged 55 to 59 whose appeals were granted by ALJs. SSA was only able to locate 242 of these files in time for our study, as follows: claimants with

- heart conditions, 125 requested, 79 received;
- back disorders, 125 requested, 90 received; and
- lung diseases, 125 requested, 73 received.

**Appendix I
Methodology**

These samples produced the following confidence limits (see tables I.1-3), based on a 95-percent confidence level:

Table I.1: Confidence Limits for Cases of ALJ Reversals of DDS Decisions Denying Benefits

In percent			
ALJ reversal	Confidence limits for cases		
	Back ailments	Heart conditions	Lung disease
ALJ granted the case, based on RFC:			
DDS RFC different	(57.8, 76.4)	(58.0, 77.2)	(58.1, 77.3)
DDS ruled impairment not severe or would not last 12 months	(11.4, 26.7)	(2.8, 13.5)	(9.0, 24.1)
ALJ disagreed with DDS on listings	(5.4, 17.7)	(10.1, 25.6)	(4.1, 15.9)
Claimant's condition had worsened	(0.0, 3.9)	(0.0, 4.2)	(0.0, 4.2)
Additional impairment not considered by DDS	(0.2, 5.9)	(2.1, 11.8)	(0.8, 8.7)
Other vocational disagreement	(1.2, 9.2)	(1.4, 10.1)	(2.3, 12.4)

Table I.2: Confidence Limits for GAO Sample Cases of DDS and ALJ Assessments of Residual Functional Capacity

In percent		
RFC assessment	Confidence limits for cases	
	DDSs	ALJs
Nonsevere impairment	(6.5, 19.7)	^a
Impairment will last less than 12 months	(2.7, 13.4)	^a
Meets or equals listings	^a	(6.1, 20.1)
Level of work claimant capable of performing:		
Heavy work	(0.5, 6.8)	(0.0, 4.2)
Medium work	(39.7, 63.2)	(0.0, 4.5)
Light work	(18.2, 37.9)	(9.8, 26.1)
Sedentary work	(0.2, 6.1)	(30.3, 52.3)
Less than sedentary work	(0.0, 4.2)	(20.0, 40.3)
Psychological limitations	(0.0, 4.2)	(0.1, 5.5)

^aNot applicable.

Table I.3: Confidence Limits for ALJ Use of Experts Overall and in GAO Sample Cases

In percent		
Expert	Confidence limits for cases	
	All 1986	GAO sample
Consulting examiner	22	(1.9, 11.0)
Medical adviser	22	(7.3, 21.0)
Vocational expert	36	(18.2, 36.0)

Characteristics of 1986 Claimants Frequently Granted Benefits by ALJs

In percent

Claimant disability (code) and age ^a	Allowance rate	
	Initial DDS	ALJ
Osteoarthritis (715):		
Aged 60 and over	38	75
Aged 55 to 59	30	71
Spinal disc injuries (722):		
Aged 60 and over	28	82
Aged 55 to 59	17	78
Degenerative disc disease (724):		
Aged 60 and over	21	75
Aged 55 to 59	16	73
Chronic ischemic heart disease (414):		
Aged 60 and over	56	81
Aged 55 to 59	54	81
Post-heart attack (410):		
Aged 60 and over	31	76
Aged 55 to 59	26	82
Hypertensive heart disease (402):		
Aged 60 and over	20	77
Aged 55 to 59	14	71
Emphysema (492):		
Aged 60 and over	40	89
Asthma (493):		
Aged 60 and over	22	96
Aged 55 to 59	16	76
Chronic obstructive pulmonary disease (496):		
Aged 60 and over	66	78
Aged 55 to 59	63	75
Diabetes mellitus (250):		
Aged 60 and over	19	71
Aged 55 to 59	14	74
Anxiety (300):		
Aged 60 and over	36	72
Aged 55 to 59	31	73

^aThe disabilities and age groups listed are those with an ALJ allowance rate of 70 percent or greater

Comments From the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

MAR 16 1989

Mr. Lawrence H. Thompson
Assistant Comptroller General
United States General
Accounting Office
Washington, D.C. 20543

Dear Mr. Thompson:

Enclosed are the Department's comments on your draft report, "Social Security: Selective Face-to-Face Interviews with Disability Applicants Could Reduce Appeals." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE
GENERAL ACCOUNTING OFFICE DRAFT REPORT, "SELECTIVE FACE-TO-FACE
INTERVIEWS WITH DISABILITY APPLICANTS COULD REDUCE APPEALS"

General Accounting Office(GAO) Recommendation

That the Secretary direct the Commissioner of Social Security to initiate a demonstration project which would include interviewing claimants selectively at the reconsideration stage.

Department Comments

We appreciate the opportunity to review the subject report and agree that it has identified an area of the appeals process that may warrant further study or consideration for revision. The agency shares the concern of Congress and a number of other groups regarding the need to improve the administrative appeals process.

We wish to emphasize that the Personal Appearance Demonstration (PAD) projects, authorized by Public Law 98-460, include a face-to-face meeting earlier in the adjudicative process than the recommended demonstration. The process recommended in this report differs by focusing on those cases which have shown the highest incidence of favorable Administrative Law Judge (ALJ) decisions. We are collecting data on characteristics of cases included in the PAD projects, and we are tracking these cases through all adjudicative levels. The PAD data will provide an opportunity to examine the effect of a face-to-face interview on certain kinds of cases, and enable us to evaluate alternatives such as those proposed by GAO. We will, as part of our final evaluation of the PAD projects, include specific attention to the effect of the face-to-face interview process on those cases containing the characteristics identified in your report. The PAD data will also provide information on the cases associated with face-to-face interviews at the DDS level. We believe the PAD will provide the data necessary to evaluate the GAO proposal. However, if at the time we analyze the PAD results we find that the GAO proposal has not been properly addressed, we will reconsider the need for a separate demonstration project as proposed by GAO. We expect to submit a final report on the PAD projects by February 1990 (see page 35 of your report).

Technical Comments

We believe the term ALJ "allowance" should be used in lieu of ALJ "reversal." Because SSA's appeals process permits claimants to submit additional evidence at the hearing level and requires the ALJs to develop the record fully, ALJ decisions are, almost without exception, based on significantly more and different information. Thus, an ALJ decision may "allow" benefits, but it does not necessarily "reverse" the disability determination services (DDS) determination or reflect on the accuracy of the

DDS decision. The report could add greatly to public understanding of the appeals process if it discussed this essential distinction explicitly and in some detail.

Now on p. 8

1. Page 7 - The second paragraph, second sentence should be revised to reflect the DDS physician/examiner team concept of adjudication. The sentence should read--"The DDS examiner, in concert with a DDS physician, evaluates every disability case to determine whether the claimant's condition(s) meets the disability criteria required by law."

Now on p. 9

2. Page 9 - Essentially, the second and third steps of the sequential evaluation process are a combined function.

Now on p. 10

3. Page 10 - The first sentence should be revised to read, "If the degree of severity of the claimant's condition(s) corresponds to the degree of severity of one of the listed condition(s), or if the claimant's condition(s) is of such severity to be judged "equivalent" to the listing, benefits are granted without further evaluation."

Now on p. 18

4. Page 27 - The last paragraph needs to clarify that the withholding of retroactive benefits applies only in title II cases.

Major Contributors to This Report

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